

EX PARTE OR LATE FILED

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January 17, 2006

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JAN 24 2006

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

Re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands* – WT Docket No. 03-66 –  
**WRITTEN EX PARTE COMMUNICATION**

Dear Ms. Dortch:

Concordia University ("Concordia") and Gryphon Wireless, LLC ("Gryphon") are writing in response to the January 5, 2006 filing by the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. ("IMWED") concerning the *de facto* transfer lease agreement between Concordia and Gryphon.

By letter dated December 22, 2005, Concordia submitted a written *ex parte* filing in this and related dockets expressing its opposition to the proposal by IMWED and others for the imposition of a 15 year maximum term on leases of Educational Broadband Service ("EBS") excess capacity. In that letter, Concordia noted that it and Gryphon had entered into a lease in excess of 15 years for excess capacity on Concordia's EBS station WNC616 (Lincoln, NE), and that this "leasing agreement assures us access to sufficient spectrum to meeting our anticipated needs during this time, while the larger financial payments we realized by entering into a long-term lease will reap significant educational benefits for our students." Gryphon was able to agree to those larger financial payments because the lease (which will run through December 14, 2025 assuming all renewal rights are exercised, Concordia's license is renewed in due course, and all other necessary Commission approvals are obtained) provides it with sufficient security that the spectrum will be available to it for the long term.

Under the Commission's rules and policies governing *de facto* transfer leases, the term of such leases, including renewals, can extend well beyond the term of the licensee's authorization.<sup>1</sup> However, because a lease cannot extend beyond the term of a license unless that license is renewed, applicants for Commission consent to a *de facto* transfer lease that can extend beyond the license term have been instructed to provide the license expiration date as the "date the Lease is due to expire" in responding to Question 3b) in Schedule 2, FCC

<sup>1</sup> See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, FCC 04-167, at ¶151 (Sept. 2, 2004).

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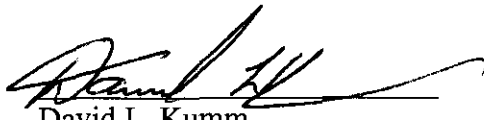
Form 603-T. Consistent with that policy, in seeking Commission consent to their *de facto* transfer lease, Concordia and Gryphon notified the Commission in response to that question and in Exhibit 2 to their FCC Form 603-T that the lease termination date would be May 25, 2015, which is the expiration date of Concordia's license for WNC616. In addition, although not required by any Commission rule or by the instructions to FCC Form 603-T, Concordia and Gryphon also advised the Commission in Exhibit 2 that their lease extends beyond the license term. In the process, however, they mistakenly identified the latest possible expiration date as October 4, 2020, rather than December 14, 2025. Although this inadvertent error is of no decisional import in the Commission's ruling on the application for consent to the *de facto* transfer lease (since the ultimate expiration date of the lease, including renewals, is not required to be disclosed), Concordia and Gryphon amended that application immediately upon learning of their error.

Unfortunately, IMWED seeks to make a mountain of this molehill. Certainly, Concordia and Gryphon regret the error in their application. However, that Concordia and Gryphon's application contained an inadvertent error regarding a fact that is not even required to be disclosed hardly supports revision of the Commission's rules to require the filing of unredacted leases entered into under the Commission's *Secondary Market* regime. Lease agreements routinely contain competitively-sensitive information that cannot be disclosed to the public without harm to the commercial system operator. Requiring the full disclosure of EBS lease terms will further marginalize EBS spectrum and drive commercial operators to utilize other bands with fewer regulatory burdens.

Respectfully submitted,

CONCORDIA UNIVERSITY

GRYPHON WIRELESS, LLC



David L. Kumm

VP for Finance, Operations & Planning/Chief  
Financial Officer



Leigh Ann Spellman

Chief Executive Officer